

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:14-cv-271-FDW**

MARVIN W. MILLSAPS,

Plaintiff,

vs.

SUSAN WHITE, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER is before the Court on the pro se Plaintiff's "Motion to Dismiss," (Doc. No. 10), which the Court construes as a motion for voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure.

Under Rule 41, Plaintiff could have filed a notice of dismissal without a court order. See FED. R. CIV. P. 41(a)(1)(A)(i) (stating that the plaintiff may take a voluntary dismissal without a court order "before the opposing party serves either an answer or a motion for summary judgment"). In any event, the Court will grant Plaintiff's motion to dismiss. To the extent that Plaintiff seeks to have this Court to withdraw the Order of the Court requiring partial payment from Plaintiff's trust account the Court will not withdraw the Order, as Plaintiff is still required to pay the full filing fee even though he is taking a voluntary dismissal of this action. See McGore v. Wigglesworth, 114 F.3d 601, 607 (6th Cir. 1997) ("Even a voluntary dismissal of a complaint or an appeal does not eliminate a prisoner's obligation to pay the required filing fees."); see also 28 U.S.C. § 1915(b)(1) (stating that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee").

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Dismiss, (Doc. No. 10), is **GRANTED**, and this action is dismissed without prejudice.
2. The Clerk is instructed to terminate this action.

Signed: November 14, 2014

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

